

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WESTERN BROADCASTING COMPANY,	)	
Appellant,	)	
	)	
v.	)	No. 81-1178
	)	
FEDERAL COMMUNICATIONS COMMISSION,	)	
Appellee,	)	
	)	
SANTA MONICA BROADCASTING, INC.,	)	
Intervenor.	)	

PETITION FOR REHEARING AND  
SUGGESTION FOR REHEARING EN BANC

Appellee Federal Communications Commission hereby petitions the Court to rehear the captioned case, which was decided on March 19, 1982, and suggests that if the division of the Court that originally heard the case denies such rehearing, the case should be reheard by the full Court.

CONCISE STATEMENT OF THE  
ISSUE AND ITS IMPORTANCE

This decision has erroneously interpreted the "public hearing" requirement of Section 316(a) of the Communications Act, 47 U.S.C. 316(a), in a manner which conflicts with the interpretation of this statute and similar statutes in other decisions by the Supreme Court and this Court. Specifically, the panel's interpretation would permit a radio station licensee, upon the basis of nothing more than a bare conclusory allegation that a Commission action may cause an increase in electrical interference to its station, to obtain, at the very least, an oral argument, and in many instances an evidentiary hearing under Section 316. The panel's opinion deprives the Commission of its authority to utilize its "special competence" concerning "engineering matters." Capitol Broadcasting Co. v. FCC, 116 U.S.App.D.C. 370, 373-74, 324 F.2d 402, 405-06 (1963), to determine at the threshold when a well-documented claim of license modification has been made requiring resolution in either an evidentiary hearing or in an oral

argument. The result is to give existing radio licensees, particularly broadcasters, a potent weapon with which to impede the institution of new, competing communications services. See United States v. FCC, 209 U.S.App.D.C. 79, 98, 652 F.2d 72, 91 (1980) (en banc).

The language of Section 316, does not contain any such broad requirement as the Court's decision in this case has read into it, and no prior decision of this, or any other, Court has read the statute in this manner. Indeed in 1949 the Supreme Court reversed a decision of this Court that had similarly misinterpreted the predecessor statute to Section 316 to require oral argument although Congress had not expressly provided for that procedure. FCC v. WJR, 337 U.S. 265, 275-76 (1949). The Court's decision in this case violates the mandate of the Supreme Court decision in WJR. See also Hecksher v. FCC, 102 U.S.App.D.C. 350, 351-52, 253 F.2d 872, 873-74 (1958); NBC(KOA) v. FCC, 76 App.D.C. 238, 241, 132 F.2d 545, 548 (1942), aff'd, 319 U.S. 239 (1943). In a 1963 decision this Court, when faced with a fact situation almost identical to this case, concluded that the Commission's resolution of conflicting engineering allegations as to interference solely on the basis of written submissions could be appropriate under Section 316. Capitol Broadcasting Co. v. FCC, supra, 116 U.S.App.D.C. 370, 324 F.2d 402. The conflict between Capitol Broadcasting and this case would, by itself, warrant rehearing. See Fed.R. App.P. 35(a); Textile Mills Sec. Corp. v. Commissioner, 314 U.S. 326, 335 (1941). More generally the Court's broad imposition of procedures not required by the statute is an improper intrusion into an area of agency discretion. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 549 (1978); FCC v. WJR supra, 337 U.S. at 281-83; FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 143 (1940).

The broad impact of this decision becomes further apparent when it is recalled that Section 316 does not apply only to broadcast stations, but to

tens of thousands of radio stations in the Commission's common carrier and private radio services as well, where electrical interference disputes are even more common than in broadcasting. To the extent that many of these are commercial, competitive services, the Court's erroneous reading of the statute has made it far easier for existing licensees to use the Commission's processes to delay the advent of additional competition. See United States v. FCC, supra, 209 U.S.App.D.C. at 98, 652 F.2d at 91. Denying the agency the authority to resolve the bulk of these disputes primarily on the basis of written submissions, as it has done in the past, will impose significant and unnecessary regulatory burdens and adversely affect the agency's ability promptly to make available new or additional services to the public. See FCC v. WJR, supra, 337 U.S. at 282.

#### FACTUAL BACKGROUND

This case arises from an application filed by Santa Monica Broadcasting for a construction permit to move the transmitter of its FM radio station KSRF, located in Santa Monica, California. The purpose of the move was to ameliorate the station's deteriorating signal to Santa Monica caused by interference from new high rise buildings. See J.A. 112. KSRF operates on the same frequency, or channel, in Santa Monica as Western Broadcasting's station KOCM in Newport Beach. KSRF and KOCM were both licensed prior to 1964 and are covered by the requirements of Section 73.213 of the Commission's rules, 47 C.F.R. 73.213. 1/

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1/ In 1962 the Commission adopted an allocation plan for FM radio channels, the central element of which was a table of assignments of specific FM channels to specific communities based on minimum mileage separations between stations of a particular class using particular frequencies. See First Report and Order, 40 F.C.C. 662, 682-89 (1962). In adopting this approach, the Commission specifically rejected other proposals, including an approach which would have permitted assignments based on protecting existing stations to their 1.0 mV/m contours. Id. at 672-74. To deal with the problem of stations existing prior to the adoption of this plan that did not comply with the newly (footnote continued on the next page)

Although not disputing that KSRF's application complied with Section 73.213, Western filed a petition to deny the transmitter move application pursuant to Section 309 of the Act, 47 U.S.C. 309, alleging that KSRF's new transmitter site would "radiate tremendous energy toward KOCM" and result in "severe, 'ruinous' interference to the KOCM signal . . . ." (J.A. 9). Western's petition included an engineering statement that purported to demonstrate the interference that would be caused by grant of KSRF's application. (J.A. 19). While Western asserted specific statutory bases for the relief it sought (J.A. 10), it did not allege that the resultant interference would constitute a modification of KOCM's license under Section 316.

In an August 1980 decision, the Commission denied Western's petition and granted Santa Monica's application to move its transmitter site. (J.A. 111). The Commission noted that it had left open the question whether an objection, alleging interference within the 1.0 mV/m contour of the objecting station, could be made when a short-spaced station such as KSRF applied for increased facilities. But the Commission emphasized that, assuming that there was a right to object, the focus in considering such an objection had always been on the question whether any additional area within the 1.0 mV/m contour would receive interference. (J.A. 113) The Commission determined KSRF's predicted coverage contours from its present and proposed sites, and found that KSRF's proposal would cause no additional interference to KOCM (J.A. 113). 2/ The Commission concluded that Western's engineering analysis was

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adopted minimum mileage separations, referred to as "short-spaced" stations, the Commission adopted special procedures that have been codified in Section 73.213. See Fourth Report and Order, 40 F.C.C. 868 (1964). See FCC Br., pp. 2-4, p. 10 n. 11.

2/ The Commission's approach towards judging KOCM's interference claims was to use the methodology the Commission uses in those other FM situations where, even after the 1962 rulemaking generally removed the relevance of determining interference within the 1.0 mV/m contour, such interference determinations continue to be necessary. See 47 C.F.R. 73.509(d). See also note 8 below.

erroneous, "substantially underestimating the degree of present interference and overestimating the degree of proposed interference." (Id.) Having determined that there would be no additional area of interference from KSRF's proposed transmitter site, the Commission held that "Section 73.213 mandates that KOCM's objection on contour-interference grounds is inapplicable." Id.

On reconsideration, the Commission addressed Western's allegation that the Commission had not adequately considered the engineering basis for its interference claims. (J.A. 118-20). After re-examining all of the pleadings and its initial analysis, the Commission found no basis to change its original conclusion that no increased interference would occur. (J.A. 135-36). The Commission based its conclusion on "the accepted methods of Section 73.313 of our Rules for determining interference . . . ." Id. KOCM was found to have failed to document adequately its claims that a different method of predicting interference potential should be used. (J.A. 136).

On appeal the Court reversed and remanded with instructions that the Commission hold an evidentiary hearing on Western's claims. The Court held that

an existing licensee of a station with a specified frequency has a right to participate in a hearing under section 316 where another broadcaster seeks a grant to operate on the same frequency and where it is alleged that the effect of the new or changed grant may be to create objectionable, electrical interference to the existing licensee.

Slip opin. at 22. Although the Court said that "the type of hearing required depends upon the facts of an individual case and the type of question to be resolved" (id.), it made clear that the minimum hearing the Commission could provide consistent with the statute was "written pleadings and oral argument" and that wherever "there are questions of fact to be resolved, then an evidentiary hearing is mandated by section 316." (Id.)

ARGUMENT

- A. The Court's Interpretation Of The Requirements Of Section 316 Is Erroneous And Conflicts With Other Decisions Of This Court And The Supreme Court.

Section 316 of the Communications Act authorizes the FCC to modify a broadcast license upon notice and "reasonable opportunity" for the licensee "to show cause by public hearing, if requested, why such order of modification should not issue." The statute contains no express provision requiring oral argument, or evidentiary hearings or any other particular procedure. In the absence of express statutory provisions, the requirements of a "hearing" depend on the facts and circumstances of each particular case. See, e.g., United States v. Florida East Coast Railway, 410 U.S. 224, 240 (1973); United States v. FCC, supra, 209 U.S. App.D.C. at 95-99, 652 F.2d at 88-92. "[T]he ultimate choice of procedure (in the absence of a statutory mandate) is left to the discretion of the agency involved, and will be reversed only for an abuse of discretion." Bell Telephone Co. of Pa. v. FCC, 503 F.2d 1250, 1266 (3d Cir. 1974), cert. denied, 422 U.S. 1026 (1975). See also Independent Bankers Ass'n v. Board of Gov., 170 U.S. App.D.C. 278, 292, 516 F.2d 1206, 1220 (1975). This Court has held that this opportunity for agency discretion exists even where the statutory requirement is for a "public hearing." See Environmental Defense Fund, Inc. v. Costle, 203 U.S. App. D.C. 340, 344-50, 631 F.2d 922, 926-32 (1980), cert. denied, 449 U.S. 1112 (1981).

With specific reference to the FCC's license modification authority under the former Section 312(b) of the Communications Act, the predecessor to Section 316, the Supreme Court held in FCC v. WJR that the right to particular procedures, as a matter of due process, "varies from case to case in accordance with differing circumstances" and that the Constitution had "left wide discretion to Congress in creating the procedures to be followed in both administrative and judicial proceedings . . . ." 337 U.S. at 276. Accordingly,

the Court held that Section 4(j) of the Act, 47 U.S.C. 154(j), which authorizes the Commission to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice," must be taken into account as bearing on the meaning of then Section 312(b). 3/ When those two sections were read together, the Court concluded, it was clear that Congress had "committed to the Commission's discretion . . . the questions whether and under what circumstances it will allow or require oral argument, except where the Act itself expressly requires it." WJR, supra, 337 U.S. at 281. 4/ See also RKD General, Inc. v. FCC, 670 F.2d 215, 232 (1981), cert. denied, 50 U.S.L.W. 3838 (Apr. 19, 1982).

The Commission, thus, has substantial discretion pursuant to Section 316 to determine what type of "public hearing" to afford depending on the circumstances of each case. 5/ The clear holding of the decision here is that

3/ In 1940, the Court had relied on Section 4(j) when it emphasized the FCC's broad discretion to order its procedures where there is no express statutory requirement. FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138, 143-44 (1940). See also FCC v. Schreiber, 381 U.S. 279, 289 (1965).

4/ At the time of WJR, Sections 222(c) and 303(f) of the Communications Act specifically provided for a "public hearing." Since the Supreme Court in WJR noted that only Section 409(a) of the statute expressly provided for oral argument (337 U.S. at 277), and the Court made no reference to Sections 222(c) or 303(f), the Supreme Court did not read "public hearing" as used in the Communications Act as automatically equating with an opportunity for oral argument.

5/ The decision here misconstrues WJR when it describes that decision as having "raised serious questions about whether and under what circumstances a hearing would be required with respect to claims of interference in cases of indirect modification." Slip opin. at 20. Contrary to the panel's impression, nothing in WJR raised questions about whether a hearing was required by then Section 312(b). That question had been resolved by the Supreme Court's decision in FCC v. NBC (KOA), 319 U.S. 239 (1943) and this Court's decision in L.B. Wilson, Inc. v. FCC, 83 U.S.App.D.C. 176, 170 F.2d 793 (1948). Rather WJR focused on the nature of the hearing required by the statute and emphasized the FCC's broad discretion to determine questions of procedure. See 337 U.S. at 275-81. Since we read nothing in WJR that could reasonably raise questions about the basic right to a hearing under then Section 312(b), we do not see the significance that the Court here apparently saw in the 1952 amendments to the Communications Act that added the term "by" (footnote continued on the next page)

the Commission must always provide at least an oral argument on the basis of the bare allegation "that the effect of the new or changed grant may be to create objectionable, electrical interference to the existing licensee," and where "there are questions of fact to be resolved, then an evidentiary hearing is mandated by section 316." Slip opin. at 22. That holding is contrary to the Supreme Court's conclusion in WJR and, more generally, is inconsistent with the Supreme Court's more recent admonition that reviewing courts may not burden agencies with procedures beyond those expressly required by Congress. Vermont Yankee Nuclear Power Corp. v. NRDC, supra, 435 U.S. at 549. 6/ Under

5/ (footnote continued from previous page)  
public hearing" to the statute. There is nothing in the legislative history of the 1952 amendments to suggest that the term "public hearing" has any special meaning here, and we submit that it adds nothing beyond the construction of the statute in KOA and L.B. Wilson. See S.Rept. No. 44, 82d Cong., 1st Sess. (1951); H.Rept. No. 1750, 82d Cong., 2d Sess. (1952); H.Rept. No. 2426 (Conference Report), 82d Cong., 2d Sess. (1952). In hearings in 1950 and 1951 on legislation that became the 1952 Communications Act Amendments, then FCC Chairman Wayne Coy testified that the proposed amendments to the former Section 312(b) constituted simply "spelling out . . . in the act" the Supreme Court's interpretation of the statute and that the amendment thus was "merely a restatement of existing law . . ." to which the FCC did not object. Hearings on S. 658 Before the House Comm. on Interstate and Foreign Commerce, 82d Cong., 1st Sess. 101-02 (1951) (emphasis added). The panel cites nothing in the legislative history of the 1952 Amendments to support the significance that it attaches to that legislation.

6/ The Court's reliance on the Hecksher and Harbenito decisions to support the new standards imposed here (slip opin. 18-22) is misplaced because those decisions, like L.B. Wilson, clearly recognized that the Commission could reject allegations that were not substantial without oral argument or evidentiary hearings, i.e., that neither Section 316 nor its predecessor always required, at a minimum, an oral argument on any allegation. See Hecksher v. FCC, 102 U.S.App.D.C. at 352, 253 F.2d at 874; Harbenito Broadcasting Co. v. FCC, 94 U.S.App.D.C. 329, 332, 218 F.2d 28, 31 (1954); L.B. Wilson, Inc. v. FCC, 83 U.S.App.D.C. at 190-91, 170 F.2d at 807-08 (Prettyman, J., concurring). The language from National Broadcasting Co. v. FCC, 124 U.S.App.D.C. 116, 124-25, 362 F.2d 946, 954-55 (1966), upon which the Court relies (slip opin. at 21), is, we would respectfully submit, overbroad to the extent that it suggests that KOA and L.B. Wilson requires an "evidentiary hearing . . . where the effect of the new grant may be to create objectionable electrical interference . . ." (emphasis added). What KOA and L.B. Wilson require is "a hearing", but there is nothing in either of those decisions to suggest that the Commission's normal broad discretion to determine the nature of the proceeding, as clearly articulated in Pottsville and WJR, has been confined. In addition it is generally recognized that the (footnote continued on the next page)

the circumstances present here, the Commission's decision of this case on the basis of written submissions complied with the hearing requirement of Section 316 and did not constitute an abuse of the Commission's procedural discretion.

Perhaps the most striking conflict presented by the instant decision, however, is with this Court's decision in Capitol Broadcasting Co. v. FCC, 116 U.S.App.D.C. 370, 324 F.2d 402 (1963), affirming New Orleans Television Corp., 23 Rad. Reg. (P&F) 1113 (1962). That case involved television stations which, like the FM radio stations in this case, are subject to a table of assignments and minimum mileage separations. As in the instant case, grant of the application before the Commission there would have resulted in a "short spacing." The Commission had, in a separate proceeding authorized such short spacing, but stated that a station would be authorized at less than the minimum mileage separations only upon condition that it suppress radiation in the direction of existing stations in order to provide those stations with interference protection equivalent to that provided if the stations were not short spaced--again a striking similarity with the instant case.

One licensee filed a petition to deny the application of another to move its transmitter in a direction that would result in short spacing. The petition alleged that the move would result in increased interference to its station and that it would not receive equivalent protection. The petition included reports from a consulting engineer that purported to support the interference claim, based in part on the unique propagation characteristics of the area. The other licensee disputed the claim and included a supporting

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rule making provisions of Section 4 of the APA, 5 U.S.C. 553, provide licensees with an opportunity to show cause by public hearing sufficient to satisfy Section 316. See WBEN, Inc. v. United States, 396 F.2d 601, 618-19 (2d Cir. 1968), cert. denied, 393 U.S. 914 (1969); National Broadcasting Co. v. FCC, supra, 124 U.S.App.D.C. at 125, 362 F.2d at 955. Section 4 of the APA, of course, does not require either oral argument or evidentiary hearings. It is thus difficult to reconcile the holdings of these cases with the inflexible reading of Section 316 set out in the instant decision.

report from its consulting engineer, once more, a virtually identical situation to the instant case. The petitioner asserted that it was entitled, in addition to other relief, to a hearing pursuant to Section 316 as articulated by this Court in L.B. Wilson, Hecksher and other decisions, on the question of modification vel non. 7/ The Commission provided no oral argument and no evidentiary hearing. On the basis of the written submissions, the Commission concluded that the petitioner's claim that it would receive additional interference was incorrect and that no modification would occur. This Court affirmed, holding:

The factual issues raised by the appellant were considered by the Commission in light of the engineering affidavits submitted. We find nothing to indicate error on the part of the Commission in appraising the assumptions and principles employed in the various engineering statements. It would seem that the relevant facts were adequately presented in these statements, and nothing suggests to us that a further hearing would produce additional facts that might change the result.

116 U.S.App.D.C. at 373, 324 F.2d at 405.

The Court's decision in the instant case cannot be reconciled with Capitol Broadcasting, which properly recognizes that the Commission has the discretion under Section 316, when properly read with Section 4(j) as the Supreme Court required in WJR, to provide a hearing by various means depending on the circumstances of each case. Where the Commission can resolve the questions on the basis of written submissions, as it did here, no further

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7/ This is one point of difference in this case and Capitol Broadcasting. Before the Commission, Western never requested a public hearing pursuant to Section 316 and indeed never mentioned the statute, although the statute requires the Commission only to provide a "public hearing, if requested." (emphasis added). See Alianza Federal de Mercedes v. FCC, 176 U.S.App.D.C. 253, 260, 539 F.2d 732, 739 (1976); Colorado Radio Corp. v. FCC, 73 App.D.C. 225, 227, 118 F.2d 24, 26 (1941). Thus the Court has rendered an important decision concerning the meaning of Section 316 of the Communications Act on the basis of an agency record in which Section 316 went virtually unmentioned by the parties and was not discussed by the Commission in its orders.

hearing would be fruitful or required. 8/ Rehearing of this case is necessary to resolve the conflict with Capitol Broadcasting. See Fed.R.App.P. 35(a); Textile Mills Sec. Corp. v. Commissioner, 314 U.S. 326, 335 (1941). 9/

B. The Court's Broad Interpretation Of Section 316  
Will Have A Serious Adverse Impact On The FCC's  
Processes.

As the demand for radio spectrum space has grown, the FCC has faced more frequent and more difficult technical decisions to balance the competing social interests for spectrum space with minimum interference. In the past

8/ The panel has erroneously deprived the Commission of its right to rely, at the threshold, on the methodology set out in Section 73.313 of its rules to resolve the interference issue here. The procedures of Section 73.313 reflect the standard engineering methodology for calculating FM radio signal coverage and, thereby, predicting interference. See FCC Br., p. 16 n. 15. See also, City College of New York, 79 F.C.C.2d 385 (1980). Western never argued to the Commission that it could not rely on the procedures of Section 73.313. Instead Western essentially sought a waiver of the applicability of that methodology because of the allegedly unique facts of its situation. The Court's decision turns the waiver standard of WAIT Radio v. FCC, 179 U.S.App.D.C. 179, 183, 459 F.2d 1203, 1207 (1972), and other cases on its head by prohibiting the Commission from relying on procedures established by rule when a party has sought, even in a vague, confusing and factually inaccurate request, to have the Commission apply some other standard. Moreover, this Court has held that it is "required [to recognize] the Commission's expertise in a field where its experience, technical and engineering knowledge enable it to deal with these problems at a level of understanding and comprehension above that of the court." Northeast Broadcasting, Inc. v. FCC, 130 U.S.App.D.C. 278, 287, 400 F.2d 749, 758 (1968). See also, WSTE-TV, Inc. v. FCC, 185 U.S.App.D.C. 13, 15, 566 F.2d 333, 335 (1977); National Broadcasting Co. v. FCC, supra, 124 U.S.App.D.C. at 126, 362 F.2d at 956.

9/ The Court's decision here also is in sharp contrast to its decision only a few months ago in RKO General, Inc. v. FCC, supra, 670 F.2d at 231-33. In that decision, the Court was faced with the argument that the literal language of Section 309(e) of the Act "requires a hearing prior to the denial of a renewal application even when there are no substantial or material questions of fact." (Id. at 233). Section 309(e) provides a much more explicit hearing requirement than Section 316, requiring that if "the Commission for any reason is unable to make the finding [that grant of an application will serve the public interest], it shall formally designate the application for hearing . . . . Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate." (emphasis added) The RKO panel declined to apply the literal language of the statute, concluding that because "such an approach in this case would not have promoted 'the proper dispatch of business' and 'the ends of justice,'" it should respect the FCC's discretion to determine questions of procedure. Id.

these questions often have been able to be resolved by new technology which expanded the frontier of usable spectrum space or made available more efficient methods of using frequencies. See, e.g., National Ass'n of Regulatory Util. Commissioners v. FCC, 173 U.S.App.D.C. 413, 525 F.2d 630, cert. denied, 425 U.S. 992 (1976). Increasingly, however, the Commission faces the prospect of having to accommodate more users within existing spectrum using existing technology. Because of this it has become more difficult for the Commission to rely on fixed rules to define interference protection. A prime example of this is the Commission's recent adoption of rules for low power television. See Low Power Television Broadcasting, FCC 82-107 (April 26, 1982), pet. for review pending, Black Citizens for a Fair Media v. FCC, D.C. Cir. No. 82-1459 (Apr. 26, 1982). There the Commission was faced with attempting to reconcile a policy of maximum protection for existing television service with maximum availability of sites for new low power television stations, which are expected to become an important source of innovative and diverse television programming. There are more than 6000 applications presently pending for these stations, and thousands more are expected now that the Commission has concluded this proceeding. However, the Court's decision here now gives existing stations a virtually unlimited ability to require the Commission to hold oral arguments and evidentiary hearings upon unsupported interference complaints. By imposing hearing procedures not required by the Communications Act, the Court has impermissibly limited the Commission's flexibility in establishing procedures to make available to the public new or additional communications services. 10/

10/ Allegations of creation of objectionable electrical interference take many forms in addition to situations such as the one presented in this case. See, e.g., Jack Straw Memorial Foundation, 35 F.C.C.2d 397, reconsid. denied, 37 F.C.C.2d 544 (1972) (interference to private radio users by FM radio station); B&W Truck Service, 15 F.C.C.2d 769 (1968) (interference to AM radio stations by private radio station); Athens Broadcasting Co., 68 F.C.C.2d 920 (1978) (interference to cable television system by FM radio station); (footnote continued on the next page)

Moreover, the Court's opinion virtually guarantees that many of these additional oral arguments and evidentiary hearings will prove meaningless and unnecessary. As we have noted above, the Court has apparently removed any Commission discretion to reject interference complaints that are not substantial -- at least an oral argument must be provided in response to any allegation of objectionable interference. And if "there are questions of fact to be resolved, then an evidentiary hearing is mandated by section 316." Slip opin. at 22. This holding is inconsistent with repeated holdings of this Court and the Supreme Court construing Section 316 and its predecessor to afford the Commission discretion to reject without any hearing allegations that are not substantial. WJR, supra, 337 U.S. at 275-76; KOA, supra, 319 U.S. at 241; Hecksher, supra, 102 U.S. App.D.C. at 351, 253 F.2d at 873. See also Porter County Chap. v. NRC, 196 U.S.App.D.C. 456, 462, 606 F.2d 1363, 1369 (1979); Bilingual Bicultural Coalition v. FCC, 193 U.S.App.D.C. 236, 249, 595 F.2d 621, 634 (1978).

In addition the Court has established a standard for hearing that is ironic. Noting the Commission's statement that it was "puzzled by KOCM's interference claim [and] unable to determine how KOCM reached its conclusion" (J.A. 136), the Court held that it was the purpose of a hearing to resolve

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Radiocall Corp., 77 F.C.C.2d 30 (1980), reconsid. denied, 85 F.C.C.2d 596 (1981) (interference between two common carrier MDS radio stations); University of Alabama, 79 F.C.C.2d 243 (1980) (interference to TV station by FM radio station); Bristol Broadcasting Co., Inc., 68 F.C.C.2d 1070 (1978) (interference between two FM radio stations operating on different channels); Capitol Broadcasting Co., Inc., 5 Rad.Reg.2d (P&F) 472 (1965) (interference to a regular television station caused by a television translator station); Lanford Telecasting Co., 42 F.C.C.2d 740 (1973) (interference to a cable television system by a television translator station). Although the literal language of this decision applies only to interference between stations operating on the same channel (slip opin. at 22), there is no logical basis for so limiting the reach of Section 316, and neither this Court nor the FCC has limited the statute in this manner in the past. See, e.g., Interstate Broadcasting Co. v. FCC, 116 U.S.App.D.C. 327, 323 F.2d 797 (1963); Jack Straw Memorial Foundation, supra, 35 F.C.C.2d 397.

such confusion. Slip opin. at 16. 11/ We are unaware of any other decision of this Court that makes it more likely that a party will be entitled to an evidentiary hearing if its claims are presented in a vague, confusing and factually unsupported manner than if its claims are well pled. We respectfully submit that it is not only impermissible and unprecedented, but also unwise, to impose on any administrative agency such a standard.

The Supreme Court in WJR observed the need to assess the effects of a ruling imposing a broad procedural requirement "upon the work of the vast and varied administrative as well as judicial tribunals of the federal system and the equally numerous and diversified interests affected by their functioning . . . ." 337 U.S. at 275. The Court's broad and inflexible interpretation of Section 316 in this case will have a serious adverse impact on the FCC, clogging its processes with numerous and unnecessary oral arguments and evidentiary hearings. As the Supreme Court recognized in Pottsville, "[agencies] should be free to fashion their own rules of procedures and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." 309 U.S. at 143-44. See also Vermont Yankee Nuclear Power Corp., supra, 435 U.S. at 543. By reading Section 316 to require at least oral argument and often evidentiary hearing on the basis of bare allegations, the Court has limited the Commission's discretion in a

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11/ We emphasize that the Commission was not "puzzled" about what its normal procedures for determining interference between FM stations demonstrated. Clearly no interference was indicated. What it was puzzled about was how Western could have reached a different conclusion. Because Western had made blatant factual errors (see FCC Br., p. 6 n. 7) and had failed adequately to explain the basis for its different conclusion, the Commission was unable to find any basis for departing from its normal procedures. The Court's decision, thus, essentially places no burden on a petitioner to document its allegations, even when they produce results that are inconsistent with well established agency procedures. As this Court held, en banc, in Bilingual Bicultural Coalition, supra, 193 U.S.App.D.C. at 249, 595 F.2d at 634, "The method by which this factual uncertainty shall be resolved is, as we often have said, up to the Commission. We have neither the inclination nor the authority to command the FCC to adopt procedures that seem desirable to us."

manner, not contemplated by Congress, that will have a serious adverse effect on the agency's ability to perform efficiently its regulatory functions.

CONCLUSION

The Commission's conclusion in this case that grant of KSRF's application would not cause increased interference to KOCM was a reasonable judgment supported in the record. The Commission's failure to provide Western an evidentiary hearing on its claim of interference was, in the circumstances of this case, a reasonable exercise of the agency's broad procedural discretion. The Court's decision here should be vacated and the Commission's orders affirmed. In the alternative, in view of the previous failure of Western to make clear that it was relying on Section 316, as distinguished from Section 309, the decision should be vacated and the case remanded to give the Commission an opportunity to articulate in the first instance how Santa Monica's application should be disposed of in light of Section 316.

Respectfully submitted,

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May 3, 1982

CERTIFICATE OF SERVICE

I, Eldoris B. Jones, hereby certify that the foregoing  
"Petition For Rehearing And Suggestion For Rehearing En Banc" was  
served this 3rd day of May, 1982, by hand delivering true copies  
thereof, to the following persons at the addresses below:

Michael H. Bader, Esq.  
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## U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON TELECOMMUNICATIONS,  
CONSUMER PROTECTION, AND FINANCE

COMMITTEE ON ENERGY AND COMMERCE

WASHINGTON, D.C. 20515

April 26, 1983

TO: Members and Staff, Subcommittee on Telecommunications,  
Consumer Protection and Finance

FR: Timothy E. Wirth, Chairman

RE: FCC Authorizing Legislation

On Thursday, April 28, the Subcommittee will mark up legislation authorizing appropriations for the FCC for fiscal years 1984 and 1985. The legislation also contains an authorization for the Corporation for Public Broadcasting, and two non-controversial amendments to the Communications Act of 1934. This memo will review the provisions of the legislation.

1. FCC Authorization

The bill authorizes \$91,156,000 for fiscal years 1984 and 1985, for the Federal Communications Commission.

The President's budget contained a request for \$86.2 million for the FCC for fiscal year 1984. For fiscal year 1983, the Commission received an appropriation of \$79.8 million, and an additional \$3.1 million in supplemental funding to meet additional payroll expenses, for a total of \$82.9 million. The 1984 Administration request represented an increase of about \$3.3 million above this amount.

# 1984 Budget Request Breakdown

	Positions	Funding (thousands of dollars)	Change from FY 1983 Appropriation
Commissioners	36	\$ 2,371	(\$ 610)
Mass Media	411	19,129	778
Common Carrier	317	15,766	( 552)
Private Radio	252	9,664	664
Field Ops.	439	18,519	1,956
Sci. & Tech.	126	6,654	242
Support	315	14,056	745
Total	1896	86,159	3,223

A detailed breakdown of the proposed budget for each of these activities is attached to this memo.

In March, the FCC submitted a request for an additional \$5.0 million for fiscal year 1984, bringing the total FCC budget request to \$91.2 million. The request breaks down as follows:

- o Almost half of the funds requested -- about \$2.4 million -- would be used to reduce the processing backlog for existing services, such as FM, cellular radio, and multipoint distribution service; and for reviewing tariffs filed under the FCC's recent access charge decision.
- o About \$1 million would be used for the implementation of new services such as FM and VHF drop-ins.
- o The remainder would be used to fill 90 full time positions throughout the agency that have or will become vacant through attrition due to a lack of funds. The FCC argues that it can most effectively fulfill its responsibilities at full strength. (Bringing the agency up to full strength is known as "base restoration.")

In its submission to the Budget Committee earlier this year, the Committee on Energy and Commerce also recommended a

significant increase in the FCC's budget as initially proposed. Our proposed increase in the FCC budget was intended to give the agency sufficient resources to make new electronic information outlets and advances in communications technology available to the public as quickly as possible; and to foster the growth of a competitive telecommunications industry without sacrificing the goal of universal service.

For these reasons, the legislation adopts the FCC's request for additional funding, and authorizes \$91.2 million for fiscal year 1984. The funding over and above the Administration's initial request is divided between the Mass Media and Common Carrier Bureaus, as follows:

#### Mass Media Bureau

The mass media marketplace is in the midst of tremendous change. There exists the potential to greatly expand the number of delivery systems and outlets that can bring electronic information and programming to the public. This Subcommittee has long encouraged the Federal Communications Commission to foster the delivery of new services to the public in order to increase competition and promote diversity.

In order for the Commission to fulfill its Congressional mandates, it must be given the appropriate resources to do its job. Within the past two years, the Commission has greatly reduced the amount of paperwork it requires of broadcast license applicants, creating large savings with respect to existing Commission resources.

However, applications for existing and new services have inundated the Commission, creating an enormous backlog. The Commission has indicated in its budget request that it currently lacks the resources to keep up with the increasing volume of applications for existing services. For example, the Commission has requested 32 additional positions at a cost of \$893,661 to help reduce the backlog of applications for FM radio. The Commission asserts that with these additional resources, it would be capable of processing 500 more applications in FY 84 and approximately 1,300 more applications in FY 85 than it would be able to at current funding levels. Without such additional resources, there will clearly be long delays in getting this additional service out to the public.

The Commission also indicates that it does not have the staff resources to process additional petitions that are expected to be filed as a result of Commission action on pending proceedings. For example, up to 300 new VHF outlets could be created as a result of Commission action on the VHF drop-in proceeding. An anticipated 2,125 VHF applications would need processing. The Commission has requested an additional 15 positions in order to have sufficient resources to process this service once it is approved.

The Commission also has requested additional personnel and resources for computer programming to process the volume of applications that are expected to be filed when the Commission finally acts on its FM drop-in proceeding. Included in this request is \$18,000 for the purchase of six computer terminals for the staff to perform engineering data entry and facilitate computer-generated FM authorizations.

Also pending before the Commission are 12,000 low power television (LPTV) applications. The Commission has not requested any additional personnel over its FY 83 levels for the processing of this service. In May it will begin to process these applications by computer, and has recently adopted lottery rules, pursuant to Congressional directive, which will further expedite processing of this service. However, a substantial question exists as to whether existing resources will be adequate to expeditiously process backlogged LPTV applications, particularly if that service is to be available in major markets in the near future.

The chart below shows the additional funding request for the Mass Media Bureau:

	<u>Dollars</u>	<u>Positions</u>
<u>Backlog Reduction</u>		
FM	\$893,661	32
<u>New Services</u>		
FM drop-ins	\$705,214	30
VHF drop-ins	\$376,380	15
Total	\$1,975,255*	77

\*This figure does not include a percentage of the \$1,534,600 requested for base restoration. Currently there are 18 vacancies due to attrition within the Mass Media Bureau. The base restoration funding will fund those positions.

#### Common Carrier Bureau

The recent settlement of the antitrust suit between AT&T

and the Department of Justice, and the continued technological developments in telecommunications, have spurred a restructuring of the industry. During this transition, the FCC will play a crucial role in the development of a truly competitive marketplace, while assuring that universal telephone service remains affordable at reasonable rates.

The Commission's access charge plan represents a fundamental change in the allocation of the costs of providing telephone service. Under the plan, as many as 1,500 telephone companies across the country will file access tariffs with the Commission. The Common Carrier Bureau will have to review these tariffs for consistency with the access charge order, as well as the provisions of the Communications Act. The Commission has requested an additional five positions at \$150,569 to handle this task.

Recent Commission decisions have authorized a number of new common carrier services. However, applications to provide these services have created an enormous backlog. Between December 1981 and March 1983, for example, 1,110 applications for cellular radio licenses were filed at the Commission. Currently, 16 staff persons carry the entire burden of processing pending cellular applications. The Commission has requested an increase of 15 new positions at \$427,742. According to the Mobile Services Division of the Common Carrier Bureau, this will reduce by one year the time necessary to process these applications.

In July 1982, in an effort to relieve the shortage of paging frequencies, the Commission allocated spectrum space for 68 paging channels and 12 multiple address paging control channels. Currently, there are over 6,000 applications pending for these services. The Commission has requested 8 additional positions at \$223,559 to process these applications.

Additionally, there are thousands of applications pending for microwave frequencies, multipoint distribution service, and newly-authorized paging services; the Commission has also begun to receive applications for digital electronic message service. The funding requested by the Commission would enable it to make substantial progress in processing these applications.

This chart shows the additional funding request for the Common Carrier Bureau:

	<u>Dollars</u>	<u>Positions</u>
Cellular Radio		
CC Bureau Staff	\$427,742	15

Admin. Law Judges	319,864	7
900 MHz Paging	223,559	8
Access Charge	150,569	5
Common Carrier Domestic Services	168,275	5
Common Carrier International Staff	197,142	5
 Total	 \$1,487,151*	 45

\*This figure does not include a percentage of the \$1,534,600 requested for base restoration. Currently there are 16 vacancies due to attrition within the Common Carrier Bureau. The base restoration funding would fund those positions.

## 2. Corporation for Public Broadcasting (CPB)

Under the Public Broadcasting Amendments Act of 1981, federal support for public radio and television was significantly reduced from \$220 million in FY 1983 to a level of \$130 million for each of FYs 1984, 1985, and 1986. Similarly, appropriations for public broadcasting have declined 25%, from \$172 million in FY 1982 to \$130 million budgeted for FY 1984 and 1985.

The public broadcasting provision of the authorization bill increases funding levels for the Corporation for Public Broadcasting to \$145 million for FY 1984, \$153 million for FY 1985 and \$162 million for FY 1986. These figures represent an increase of 5.6% -- the expected inflation rate over three years. This authorization increase is intended to keep CPB whole by compensating it for expected cost increases, and loss to inflation which was not factored into the original 1981 authorization which set forth the spending levels for FYs 1984-86. At the same time, by maintaining this sharply reduced level of funding while adjusting it only for inflation, this provision is intended to reaffirm the Congressional commitment to fiscal austerity and budgetary restraint. At the time of the 1981 Act, it was hoped that alternate means of financing public broadcasting could be found to substitute for this reduced funding. In the 1981 Conference Report, Congress

expressed concern that while public broadcasting must sustain its fair share of budgetary cuts, its Congressional mandate to provide programs of high quality, diversity, creativity and excellence must not be compromised.

Both public radio and television have made efforts to compensate for these funding reductions by expanding fundraising activities and by preparing to enter ancillary commercial ventures. However, it currently appears that revenues from these new sources will not be generated quickly enough, and in sufficient amounts to prevent the curtailment of vital programming services. For example, important educational series, such as 3-2-1 Contact are going out of production for lack of funding, and programs such as Overeasy geared especially for the elderly, are now without sufficient funding to be renewed. Stations are also reducing the amount of locally produced programs, as well as their overall program hours and staff.

Federal cuts have also been compounded by budgetary cutbacks at the state and local level and funding reductions in other federal support programs that contribute to CPB -- such as the National Science Foundation -- have further diminished CPB's pool of available resources. Thus, in order to prevent further reduction of public broadcasting services, and to maintain the quality of programming, this modest additional funding authority for CPB is provided in this bill.

### 3. Technical Amendments

#### Modification by FCC of Construction Permits or Licenses

This provision would amend Section 316 of the Communications Act which authorizes the Commission to modify station licenses and permits. A Section 316 proceeding commonly arises where a broadcast licensee, for example, files an application for a license or construction permit modification in order to increase the height of its station transmitter with the intention of widening its coverage area.

This amendment would make clear that parties requesting hearings under Section 316 must allege "specific allegations" raising a "substantial and material question of fact" as to the Commission's proposed modification, in order to be entitled to a hearing. That is, the FCC would not have to grant a hearing in such a proceeding if the pleadings did not raise any

material question of fact on which to hold a hearing. This pleading standard would be essentially the same as that which governs all other Commission proceedings including all other licensing matters under Section 309 of the Act.

#### Clarification of Forfeiture Authority Over De-licensed Radio Services

Last year, the Congress enacted the Communications Amendments Act of 1982. The statute includes a provision which authorized the Commission to terminate the individual licensing of operators in the citizens band and radio control services. The legislative history which accompanies the statute stated that the Commission should continue to actively enforce its rules against any CB operator who violates them. (Stricter enforcement of Commission rules is a goal of the organized CB community.)

This proposal would amend Section 503(b)(5) to clarify that the Commission has authority to levy forfeitures against violators in these radio services in the same manner as if a license had been issued. Thus, the FCC would not have to follow the more cumbersome procedures that it currently must abide by in order to deal with violations of Commission rules by those who do not hold licenses.

Activity Table  
(Dollars in thousands)

	FY 1982		FY 1983		FY 1984		Change	
	Pos/WY	Dollars	Pos/WY	Dollars	Pos/WY	Dollars	Pos/WY	Dollars
I. COMMISSIONERS								
A. Total Personnel Compensation.....	48/51	\$ 1,875	36/49	\$ 2,416	36/36	\$ 1,778	—/-13	\$ -638
B. Total Personnel Benefits.....		159		227		172		-55
C. Total Benefits for Former Pers. ..		1		1		1		—
D. Total Other Obligations.....		404		337		420		+83
Total Obligations.....		\$ 2,439		\$ 2,981		\$ 2,371		\$ -610
II. MASS MEDIA								
1. Policy and Rulemaking.....	64/71	\$ 2,405	68/64	\$ 2,390	68/64	\$ 2,385	—/-	\$ -5
2. Authorization of Service.....	206/217	5,880	222/214	6,394	222/220	6,559	—/+6	+165
3. Enforcement and Hearings.....	114/126	4,242	109/109	4,046	109/105	3,890	—/-4	-156
4. International.....	12/14	510	12/11	442	12/11	441	—/-	-1
A. Personnel Compensation.....	396/428	\$13,037	411/398	\$13,272	411/400	\$13,275	—/+2	\$ +3
B. Personnel Benefits.....		1,195		1,334		1,350		+16
C. Total Benefits for Former Pers. ..		7		8		8		—
D. Total Other Obligations.....		3,760		3,817		4,496		+679
Total Obligations.....		\$17,999		\$18,431		\$19,129		\$ +629
III. COMMON CARRIER								
1. Economic Res. & Analysis.....	20/23	\$ 741	18/18	\$ 616	18/18	\$ 615	—/-	\$ -1
2. Accounting and Audits.....	25/28	1,030	33/32	1,249	33/32	1,247	—/-	-2
3. Rate and Service Regulation...	119/127	4,728	133/125	4,939	133/128	5,048	—/+3	+109
4. Authorization of Ser. & Fac...	120/122	3,788	120/119	3,921	120/119	3,913	—/-	-8
5. International.....	12/14	526	13/13	518	13/13	517	—/-	-1
A. Total Personnel Compensation.....	296/314	\$10,813	317/307	\$11,243	317/310	\$11,340	—/+3	\$ +97
B. Total Personnel Benefits.....		970		1,086		1,134		+48
C. Total Benefits for Former Pers. ..		6		6		6		—
D. Total Other Obligations.....		2,229		3,983		3,286		-697
Total Obligations.....		\$14,018		\$16,318		\$15,766		\$ -552

Activity Table  
(Dollars in thousands)

	FY 1982		FY 1983		FY 1984		Change	
	Pos/WY	Dollars	Pos/WY	Dollars	Pos/WY	Dollars	Pos/WY	Dollars
IV. PRIVATE RADIO								
1. Land Mobile Services.....	42/44	\$ 1,489	42/39	\$ 1,458	42/40	\$ 1,487	--/+1	\$ +29
2. Authorization of Service.....	177/179	3,118	177/173	3,327	177/174	3,327	--/+1	--
3. Special Services.....	33/36	1,271	33/30	1,170	33/31	1,202	--/+1	+32
A. Total Personnel Compensation.....	252/259	\$ 5,878	252/242	\$ 5,955	252/245	\$ 6,016	--/+3	\$ +61
B. Total Personnel Benefits.....		569		613		642		+29
C. Total Benefits for Former Pers. ..		5		4		4		--
D. Total Other Obligations.....		2,466		2,428		3,002		+574
Total Obligations.....		\$ 8,918		\$ 9,000		\$ 9,664		\$ +664
V. FIELD OPERATIONS								
1. Monitoring.....	152/162	\$ 4,286	162/149	\$ 4,051	162/154	\$ 4,176	--/+5	\$ +125
2. Inspections/Investigations....	133/141	3,623	133/133	3,511	133/134	3,528	--/+1	+17
3. Public Service.....	124/117	2,687	124/117	2,761	124/121	2,848	--/+4	+87
4. Engineering.....	20/21	619	20/20	606	20/20	604	--/--	-2
A. Total Personnel Compensation.....	429/441	\$11,215	439/419	\$10,929	439/429	\$11,156	--/+10	\$ +227
B. Total Personnel Benefits.....		1,238		1,450		1,528		+78
C. Total Benefits for Former Pers. ..		9		8		8		--
D. Total Other Obligations.....		4,042		4,176		5,827		+1,651
Total Obligations.....		\$16,504		\$16,563		\$18,519		\$+1,956
VI. SCIENCE AND TECHNOLOGY								
1. Technical Analysis.....	27/30	\$ 1,100	27/27	\$ 1,100	27/27	\$ 1,099	--/--	\$ -1
2. International Telecomm. Pol...	22/24	857	22/22	873	22/22	872	--/--	-1
3. Nat'l Spectrum Mgmt.....	27/31	1,045	27/27	1,011	27/27	1,010	--/--	-1
4. Equip. Stds. & Approval.....	42/44	1,365	42/42	1,447	42/41	1,411	--/-1	-36
5. Technology Planning.....	8/9	339	8/8	334	8/7	292	--/-1	-42
A. Total Personnel Compensation.....	126/138	\$ 4,706	126/126	\$ 4,765	126/124	\$ 4,684	--/-2	\$ -81
B. Total Personnel Benefits.....		427		459		468		+9
C. Total Benefits for Former Pers. ..		3		2		2		--
D. Total Other Obligations.....		1,203		1,186		1,500		+314
Total Obligations.....		\$ 6,339		\$ 6,412		\$ 6,654		\$ +242

Activity Table  
(Dollars in thousands)

	FY 1982		FY 1983		FY 1984		Change	
	Pos/WY	Dollars	Pos/WY	Dollars	Pos/WY	Dollars	Pos/WY	Dollars
VII. SUPPORT								
1. Legal Services.....	54/53	\$ 2,015	54/50	\$ 1,887	54/53	\$ 1,999	--/+3	\$ +112
2. Plans and Policy.....	19/22	822	19/16	622	19/19	739	--/+3	+117
3. Public Affairs.....	21/24	654	21/21	622	21/21	621	--/--	-1
4. Financial Management.....	51/52	1,218	51/52	1,378	51/51	1,351	--/-1	-27
5. Management Services.....	17/17	534	17/17	604	17/16	568	--/-1	-36
6. Administrative Services.....	95/110	2,321	95/101	2,411	95/97	2,316	--/-4	-95
7. Personnel Management.....	51/63	1,773	51/54	1,720	51/51	1,625	--/-3	-95
8. Emergency Communications.....	7/9	321	7/7	283	7/7	283	--/--	--
A. Total Personnel Compensation.....	315/350	\$ 9,658	315/318	\$ 9,527	315/315	\$ 9,502	--/-3	\$ -25
B. Total Personnel Benefits.....		930		985		1,018		+33
C. Total Benefits for Former Pers. ..		10		11		11		--
D. Total Other Obligations.....		3,012		2,888		3,525		+637
Total Obligations.....		\$13,610		\$13,411		\$14,056		\$ +645
COMMISSION TOTALS								
A. Total Personnel Compensation.....	1,862/1,981	\$57,182	1,896/1,859	\$58,107	1,896/1,859	\$57,751	--/--	\$ -356
B. Total Personnel Benefits.....		5,488		6,154		6,312		+158
C. Total Benefits for Former Pers. ..		41		40		40		--
D. Total Other Obligations.....		17,116		18,815		22,036		+3,241
Total Obligations.....		\$79,827		\$83,116		\$86,159		+3,043

Appropriations Requirements

	<u>Positions</u>	<u>Workyears</u>	<u>Dollar Requirement</u>
<u>FY 1982</u>	1,862	1,981	\$79,827,000
<u>FY 1983</u>	1,896	1,859	\$83,116,000
<u>FY 1984</u>			
<u>FY 1984 Budget to Congress</u>	<u>1,896</u>	<u>1,859</u>	<u>\$86,159,000</u>
Base Budget	1,806	1,859	\$86,159,000
Additional Requirements:			
o <u>Base Restoration</u>			
-- If we hire up to our current 1,896 FTP ceiling in FY 1984 we would require an add- itional \$1,534,600 and generate an additional 45 WYs.	+90	+45	\$+1,534,600
o <u>Backlog Reduction in Existing Services</u>			
-- FM	+32	+26	\$ +893,661
-- Cellular			
o Common Carrier	+15	+12	\$ +427,742
o Admin. Law Judges	+7	+7	\$ +319,864
-- 900 MHz Paging	+8	+6	\$ +223,559
-- Access Charge Tariffs	+5	+4	\$ +150,569
-- Common Carrier Domestic Services	+5	+4	\$ +168,275
-- Common Carrier International Staff	<u>+5</u>	<u>+4</u>	<u>\$ +197,142</u>
Total Existing Services	+77	+63	\$+2,380,812
o <u>New Services</u>			
-- FM Drop-ins	+30	+18	\$ +705,214
-- VHF Drop-ins	<u>+15</u>	<u>+11</u>	<u>\$ +376,380</u>
Total New Services	+45	+29	\$+1,081,594
New Total	2,018	1,996	\$91,156,006

7. According to the most recent Arbitron ratings, please indicate, for all programming, your station's audience share and rank, if your station is measured and ranked. If your station uses another rating service, please indicate its name.

AUDIENCE SHARE \_\_\_\_\_

RANK WITHIN MARKET \_\_\_\_\_

RATING SERVICE \_\_\_\_\_

THANK YOU VERY MUCH FOR COMPLETING THIS  
FORM. PLEASE RETURN THE FORM TO:

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B331 RAYBURN BOB  
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ATTN: DEAN BRENNER

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT  
LARRY EADS, OF FCC'S AUDIO SERVICES DIVISION  
AT 202-632-6485